

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

BARBARA J. STEWART

Plaintiff,

VS.

AMERICAN VAN LINES, ET AL.

Defendants.

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CASE NO. 4:12CV394

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On January 21, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that USAA's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Dkt. 94) be GRANTED, that Plaintiff's claims against Defendant USAA be dismissed without prejudice to refiling in a court of competent jurisdiction, that Defendants American Van Lines, United States Van Lines, Kentron Phillips and Marsha Smith's Motions to Dismiss and Strike in Response to Plaintiff's Fourth Amended Complaint (Dkt. 92) be GRANTED as to Plaintiff's claims against Defendants Smith and Phillips and Plaintiff's claims under 49 C.F.R. § 375, that Plaintiff's claims against Defendants Smith and Phillips and Plaintiff's claims under 49 C.F.R. § 375 be dismissed with prejudice, that Defendants American Van Lines, United States Van Lines, Kentron Phillips and Marsha Smith's Motions to Dismiss and Strike in Response to Plaintiff's Fourth

Amended Complaint (Dkt. 92) be DENIED as to Defendants' venue arguments, that Plaintiff's Motion for Summary Judgment (Dkt. 96) be DENIED, and that Plaintiff's remaining claims against United States Van Lines and American Van Lines for damages, delay damages, failure to furnish arbitration notice, and other damages cognizable under the Carmack Amendment should proceed to trial in this District.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

Therefore, USAA's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Dkt. 94) is GRANTED and Plaintiff's claims against Defendant USAA are dismissed without prejudice to refile in a court of competent jurisdiction.

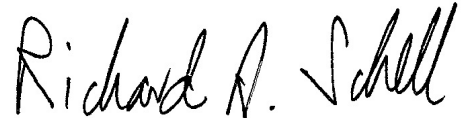
Defendants American Van Lines, United States Van Lines, Kentron Phillips and Marsha Smith's Motions to Dismiss and Strike in Response to Plaintiff's Fourth Amended Complaint (Dkt. 92) are GRANTED as to Plaintiff's claims against Defendants Smith and Phillips and Plaintiff's claims under 49 C.F.R. § 375, and Plaintiff's claims against Defendants Smith and Phillips and Plaintiff's claims under 49 C.F.R. § 375 are dismissed with prejudice.

Further, Defendants American Van Lines, United States Van Lines, Kentron Phillips and Marsha Smith's Motions to Dismiss and Strike in Response to Plaintiff's Fourth Amended Complaint (Dkt. 92) are DENIED as to Defendants' venue arguments, Plaintiff's Motion for Summary Judgment (Dkt. 96) is DENIED, and Plaintiff's remaining claims against United States

Van Lines and American Van Lines for damages, delay damages, failure to furnish arbitration notice, and other damages cognizable under the Carmack Amendment shall proceed to trial in this District.

IT IS SO ORDERED.

SIGNED this the 14th day of February, 2014.

A handwritten signature in black ink that reads "Richard A. Schell". The signature is written in a cursive style with a horizontal line underneath the name.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE